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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 29

No. 623 24

MAE SILVER, APPELLANT,

vs.

BENJAMIN SILVER

APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

FILED JANUARY 11, 1929

(33,932)

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IN SUPERIOR COURT OF NEW HAVEN COUNTY

MAE SILVER

vs.

BENJAMIN SILVER

ANSWER—Filed Nov. 26, 1927

The defendant denies the truth of the allegations alleged in the plaintiff's complaint.

Defendant, by Daniel Keogh, His Attorney.

IN SUPERIOR COURT OF NEW HAVEN COUNTY

AMENDED COMPLAINT—Filed by Consent in Court March 28, 1928

The complaint in the above action is hereby amended by substituting the following in place thereof:

1. On September 11, 1927, the plaintiff, at the invitation of the defendant, became and was a passenger in an automobile owned and operated by the defendant.

2. Said automobile was duly registered under the laws of the State of Connecticut, and the defendant was a duly licensed operator of motor vehicles under the laws of the State of Connecticut.

3. While the defendant was operating said automobile, on said day, at about three o'clock in the afternoon, in the town of Milford, county of New Haven, State of Connecticut, traveling in a southerly direction on the highway known as New Haven Avenue and about 300 feet from the intersection of New Haven Avenue and Chapel Street, he, by his heedlessness, caused said automobile to run against and into another automobile.

4. At the time the defendant's automobile collided with said other automobile the plaintiff was a passenger in said

[fol. 6] automobile, and was at all times in the exercise of due care, and had no control over the operation of either of said automobiles.

5. The direct and proximate cause of the defendant's automobile striking said other automobile was the heedlessness of the defendant, and his recklessness in disregarding the rights of others, in that at the time his automobile collided with said other automobile he was driving said automobile at a reckless and dangerous rate of speed, having regard to the width, traffic, and use of said highway, and so as to endanger the life and limb of the plaintiff, and in that he did not have his automobile under proper and reasonable control, and in that he did not have said automobile under such control so that it could be stopped and the collision with said other automobile avoided, and in that he did not have a proper look-out for other vehicles and objects on the highway on which he was traveling.

6. As a direct and proximate result of the acts and conduct of the defendant in the operation of said automobile, hereinbefore described, the plaintiff was thrown with great force and violence against and through the windshield of the defendant's automobile, receiving numerous cuts, lacerations, abrasions, bruises and injuries to her head and body, externally and internally, receiving also contusions on the upper and lower lip; receiving also multiple lacerations of the head and face, requiring many stitches, and leaving many permanent scars on the head and face; said permanent scars have caused disfiguration, and the plaintiff will suffer great humiliation; the plaintiff has also suffered great pain of body and mind and for a long time will continue to suffer great pain of body and mind, and she has lost considerable blood and weight as a result of the aforementioned injuries.

[fol. 7] 7. As a further direct and proximate result of the acts and conduct of the defendant in the operation of said automobile hereinbefore described, the plaintiff has sustained a severe nervous shock which left her in a very nervous and weakened condition, and she has suffered, and will suffer for some time to come, from nervous prostration, and as a result of this nervous condition the plaintiff's menstrual periods have been prolonged.

8. As a further direct and proximate result of the acts and conduct of the defendant in the operation of said automobile, hereinbefore described, and as a direct result of the injuries received, hereinbefore described, the plaintiff has been obliged to spend a large sum of money for medicines, medical care, and attention, and for a long time to come will continue to spend other sums of money for medicines, medical care, and attention, in an endeavor to cure herself of said injuries received.

The plaintiff claims $9,000 damages.

The plaintiff, by Herman Levine, His Attorney.

[fol. 8] In Superior Court of New Haven County

[Title omitted]

Verdict—March 28, 1928

In this case the jury finds the issues for the defendant.

A. E. Bradley, Foreman.

(Directed verdict for defendant, March 28, 1928, at fourten P. M. Simpson, J.)

[fol. 9] In Superior Court of New Haven County

Mae Silver, of Hamden,

vs.

Benjamin Silver, of Hamden

Judgment—April 18, 1928

This action, by complaint claiming $9,000 damages and amended complaint, came to this court on the first Tuesday of November, 1927, and thence by continuance to the twenty-eighth day of March, 1928, when the parties appeared and were at issue to the jury, as on file.

Said cause having been heard and committed to the jury they by direction of the court returned their verdict as follows:

"In this case the jury finds the issues for the defendant."

The court accepted said verdict.

And said cause came thence by continuance to the present time, when the plaintiff having filed a motion to set aside said verdict as on file, the court, having heard the parties, denies said motion.

Whereupon it is adjudged that the defendant recover of the plaintiff his costs taxed at — dollars and — cents.

Alfred N. Wheeler, Clerk.

[fol. 10] In Superior Court of New Haven County

[Title omitted]

Motion to Set Verdict Aside—Filed Mar. 28, 1928

The plaintiff in the above entitled action hereby moves that the verdict rendered therein be set aside and a new trial granted, because the same is against the law and the evidence presented in said case.

The Plaintiff, by Herman Levine, David M. Reilly, Her Attorneys.

(Motion denied, Simpson, J., April 18, 1928.)

[fol. 11] In Superior Court of New Haven County

[Title omitted]

Plaintiff's Appeal—Filed April 19, 1928

In the above entitled cause the plaintiff appeals from the judgment of this court to the Supreme Court of Errors to be holden in and for the Third Judicial District, for a revision of the errors which she claims to have occurred in the trial thereof, and for reasons of said appeal assigns the following:

1. The court erred in denying the plaintiff's motion to set aside the verdict and for a new trial.

2. The court erred in granting the defendant's motion that a verdict be directed in his favor.

3. The court erred in holding, ruling, and deciding, that conceding all the questions of fact in the plaintiff's favor she would not be entitled to recover as a matter of law.

The plaintiff therefore hereby requests said court to certify to the Supreme Court of Errors all the evidence in said cause, and she prays for such relief as is provided by the law in the premises.

The Plaintiff, by Herman Levine, David M. Reilly, Her Attorneys.

[fol. 12] In Superior Court of New Haven County

[Title omitted]

Before Hon. Earnest C. Simpson, Judge, and a Jury

Statement of Evidence

Appearances of Counsel—April 18, 1928

For the Plaintiff: Herman Levine, Esq., David M. Reilly, Esq.

For the Defendant: David Keogh, Esq., Messrs. FitzGerald & Hadden.

Mrs. Mae Silver sworn by Mr. Gorman.

Direct examination.

By Mr. Reilly:

The Clerk: Step right up in the box. Hold up your right hand.

The Witness: Can I take off my coat?

The Clerk: Your full name?

The Witness: Mrs. Mae Silver. Mae Silver.

Q. And where do you live, Mrs. Silver?

A. Fourteen eighty-six Dixwell Avenue.

Q. And you live there with Mr. Silver, your husband?
A. Yes, sir.
Q. And how many others are in your family?
A. Two.
Q. Two children?
A. Two children.
Q. And how old are they?
A. One is three and one is six.
Q. Now, if you will please keep your voice up, as the jurors must hear what you say?
A. Yes.
Q. One is how old?
A. Three. And one is six.
Q. Girls or boys?
A. The girl is three and the boy is six.
Q. Did your husband own an automobile last September?
A. Yes, sir.
Q. September, 1927?
A. Yes, sir.
Q. And do you know if that car was registered? Was it registered under the laws of the State of Connecticut?
A. Yes, sir.

* * * * * * *

Q. On September 11th, last year, were you a passenger in the car?
A. Yes, sir.
Q. And was your husband operating——
A. Yes, sir.
[fol. 13] Q. Where were you going in this automobile?
A. I was going for a ride, to Woodmont.
Q. And who was in the automobile?
A. My children and a brother of mine, sitting in the back.
Q. Your two children and your brother?
A. Yes, sir.
Q. Now, your—was your husband driving?
A. Yes, sir.
Q. And where were you seated?
A. Right next to him.
Q. Is it a left-hand drive?
A. Yes, sir.

Q. What kind of a car was he driving?
A. An Essex.
Q. And was it a closed or an open car?
A. A closed car.
Q. A closed car?
A. Yes, sir.
Q. And a sedan or a coach?
A. Coach.
Q. And in the rear seat—who was seated there?
A. My brother and two children—my two children.
Q. Your two children?
A. Yes, sir.
Q. So that there were five passengers in the car?
A. Yes, sir.
Q. You left your home where?
A. From——
Q. Did you live—were you living in Whitneyville or Hamden at that time?
A. At the same address.
Q. And came through New Haven?
A. Yes, sir.
Q. And where did you drive through, after leaving New Haven?
A. We drove through Savin Rock.
Q. Through West Haven; Savin Rock?
A. Yes, sir.
Q. And go down through Woodmont?
A. Yes, sir.
Q. And do you know what street you were on in Woodmont?
A. Why, New Haven Avenue.
Q. Will you keep your voice up a little bit?
A. New Haven Avenue.
Q. Now, what happened on New Haven Avenne?
A. Well, we were riding and my—and my boy—un—called out—well—"Look—look at the horses, Daddy"—right on the side of the road is a—happened to be a riding school there, where women riding horses—whether they were women or girls I don't—I don't know, but the little boy hollered out "Look at the horses. Oh, look at the horses, Daddy," and Mr. Silver turned his head and he crashed right into a car in front of us.

Q. Now, this road that you were on, Mrs. Silver, I'll ask you to look at this photograph, Exhibit A, and ask you if you identify that as the road that you were on?

A. Yes, it was.

Q. And do you recognize the first intersecting street on the left?

A. Right here (indicating).

Mr. Reilly: The left. The witness is pointing to the left of the photograph.

[fol. 14] The Witness: Right there.

Q. Had you passed that street?

A. Yes, we have.

Q. Now, you mentioned a vacant lot or a piece of land. Will you indicate that? If you will turn it around, please?

A. Right over there (indicating).

Q. About in back of that automobile truck that appears there?

A. Yes, right in back of that automobile truck. That was the vacant spot.

Q. Now, Mrs. Silver, does this photograph—is it directed in the direction of your automobile—the direction your automobile was traveling?

A. Yes.

Q. And do you know the name of the next street beyond that intersecting street, on the left? The street that you were approaching?

A. No. It be—I don't exactly know the name, but I think it is Chapel Street. Whether the first is Chapel Street or the second I don't know, but I imagine it is Chapel Street. The second——

Q. That you were approaching?

A. Yes.

Q. About how far was the automobile that you were in from that second street, Chapel Street, before this crash occurred?

A. Well, about three hundred feet. About that much.

Q. And these horses were over to the right?

A. To the——

Q. In that lot?

A. Yes. On the right hand side.

Q. And on the right of this photograph?

A. Yes. Right there (indicating).

Q. Now, you say the boy—how old is he?

A. Well, at that time he was five and a half, or five.

Q. And he said "Oh Daddy, look at the horses," is that it?

A. Yes, sir.

Q. And did you see what your husband did?

A. Why, I just couldn't see what he did. I—he looked—he looked at the side. He just turned his head to look at what the child wanted him to see.

Q. Looked in the direction of the horses?

A. Yes.

Q. Then what happened?

A. Then he crashed into the car before.

Q. Yes.

A. And I sat—and I—my body fell forward and the windshield broke. I had—the windshield broke and I went right—half way through it, and I——

Q. Now, about how fast was the automobile traveling at the time that this crash occurred?

A. Oh, I should say between fifteen and twenty. About twenty miles an hour.

Q. And before this crash occurred was there—did you [fol. 15] see other automobiles along the road?

A. Well, I did, yes.

Q. And in front of you?

A. Well, not exactly. They were in front of me, but I just couldn't—I just don't know how much in front of me they were.

Q. I didn't ask you that. Did you see other automobiles in front of you?

A. Yes, sir.

Q. And were there automobiles in back of you, do you know?

A. Why, I didn't—I didn't see.

Q. It was on what day of the week?

A. On a Sunday.

Q. Yes. Now, after this crash occurred and after you say your head went through the windshield, what else happened? Do you recall?

A. Well, I—I—um—I—well, I just put my foot out, get out, and I had—all blood was streaming down my face. I couldn't stop it, it had such a flow, and I was taken—all bruised, and my shoulders and my head, (indicating), was all—I had big eye, like that, and my head was kind of hurt, you know, someone on the road going to Milford took me in the machine to take me to the hospital, and there I—the doctor in the hospital sewed me up.

* * * * * * *

Cross-examination.

By Mr. Hadden:

Q. Are you, or were you at that time, employed anywhere? Working anywhere?

A. No, sir.

Q. What is your husband's business?

A. In the Metropolitan Insurance Company.

Q. Sells insurance, does he?

A. Yes, sir.

Q. How long has he worked there?

A. Oh, in that line about five or six years.

Q. He is the sole support of you and the children, is he?

A. Yes, sir.

Q. You have no income of your own?

A. No, sir.

Q. You had ridden with him in this automobile before?

A. Yes, sir.

Q. How long before the accident was the car purchased?

A. April.

Q. And the accident happened when?

A. In September.

Q. And it was used—do you drive?

A. No, sir.

Q. But you have ridden in it numbers of times?

A. Yes, sir.

Q. Now, on this Sunday, what time did you leave home?

A. Well, I left home, might have been about half-past one; two o'clock.

* * * * * * *

[fol. 16] Q. Isn't it so, Mrs. Silver, that there was quite a string of traffic proceeding in each direction?

A. Yes, sir.

Q. Now, the road where this accident happened is only wide enough for two automobiles?

A. Yes, sir.

Q. That is, the paved part of the road?

A. Yes, sir.

Q. And before this accident happened your husband was driving along on the right-hand side of the road?

A. Yes, sir.

Q. And how fast was he going before the accident?

A. About twenty miles an hour.

Q. Did you look at the speedometer?

A. Why, I did before that; yes.

Q. Where, before that, did you look at the speedometer?

A. Why, about a half mile further up.

Q. And what did the speedometer show when you looked at it?

A. It looked to me about eighteen miles; eighteen.

Q. Why did you look at it?

A. Well, because I always look at a speedometer when I go in the car.

Q. It was right in front of where you were sitting?

A. Yes, sir.

Q. Right on the dashboard in front?

A. Yes, sir.

Q. You didn't have any children in front with you that day?

A. No, sir.

* * * * * * *

Q. Don't you recall that your automobile was in a line of traffic all the time?

A. Why (pause) there was a line of traffic away—well, about a half mile, may be a quarter of a mile, before—before my husband——

Q. What do you mean by that?

A. Before Mr. Silver drove the car.

Q. Well, wasn't anybody in front of him?

A. Yes, sir.

Q. Anybody within a half mile?

A. Why, there was. I don't know how to measure—I don't remember—I don't know how to measure, but there was cars in front of him.

Q. And there was cars in back of you?

A. Yes, sir.

Q. And there was cars going in the opposite direction?

A. Yes, sir.

• • • • • • •

Q. Now, as your husband drove along, did he drive in the line of traffic?

A. Yes, sir.

Q. And did he pass any cars between Oyster River and the point of the accident?

A. No, sir.

Q. So that, at the speed he was driving was the same speed as the other cars going in the same direction he was going——

A. Yes, sir.

Q. He didn't pass anybody?

[fol. 17] A. No, sir.

Q. And no one passed him?

A. No, sir.

Q. He stayed on the right-hand side of the road?

A. Yes, sir.

Q. And everything was going along very smoothly?

A. Yes, sir.

Q. Did he seem to be looking ahead?

A. Yes, sir.

Q. What—were you having any conversation with him at all?

A. No, sir.

Q. Didn't you have any conversation with him in the car all day?

A. Why, I did.

Q. When?

A. In Savin Rock.

Q. Any place else?

A. No, sir.

Q. Do you want his honor and the jury to understand that, from Savin Rock until the accident happened, you didn't say a word to your husband?

A. No, sir.

Q. Are you sure?

A. Yes, sir.

Q. Didn't you say anything?

A. Because I don't call his attention to anything when he's driving.

Q. You did at Savin Rock?

A. Well, I did, but since that time, being there was so much traffic, I didn't call his attention.

Q. In other words, because of the very crowded condition of traffic, you didn't want to talk to him?

A. No, sir.

Q. He didn't say anything to you?

A. No, sir.

Q. He didn't say anything to anybody?

A. No, sir.

Q. Now, your brother, who was in the back seat, has he some impairment in his speech or hearing?

A. Yes, sir. He can't hear.

Q. Can he speak?

A. Yes, sir.

Q. But there was no conversation. He wasn't saying anything?

A. No, sir.

Q. Your husband wasn't saying anything?

A. No, sir.

Q. And you weren't saying anything?

A. No, sir.

Q. How long did it take you to go from Savin Rock to the place of the accident?

A. I should say about twenty-five or thirty minutes.

Q. So that for twenty-five or thirty minutes your car rolled along in absolute silence as far as any conversation?

A. Yes, sir.

Q. Then, when you got down about three hundred feet from Chapel Street——

A. Yes, sir.

Q. —your little boy—what is the little boy's name?

A. Raymond.

Q. Your little boy, Raymond, said "Daddy, look at the horses"?

A. Yes, sir.

Q. Is that what he said?

A. Yes, sir.

Q. And is that about the way he said it?

A. Well, he said "Oh, Daddy, look at the horses."

Q. Were you looking out to the right at that time?

A. Why almost to the right. I wasn't looking at the [fol. 18] place, but almost to the right.

Q. Had you seen the horses?

A. I have seen them before.

Q. That day, I mean.

A. Oh, yes, sir. I had seen them that day.

Q. Had you seen them out there before the boy spoke?

A. Yes, sir, I did.

Q. How many?

A. Oh, quite a number of them.

Q. Well, how many is quite a number?

A. About four or five.

Q. Anybody riding them?

A. Yes, sir, some young ladies riding them.

Q. And how far from the road were these horses?

A. I should say about thirty feet.

Q. Over to the right.

A. Over to the right-hand side.

Q. And you saw them before the boy spoke?

A. Yes.

Q. Did you say anything?

A. No. As the car was going, at that speed, I didn't say anything. But I saw them.

Q. Well, when the little boy spoke, did you look to the right?

A. Why, I didn't look—I had seen them before—the car had——

Q. No, I didn't ask you whether you saw them before at all. At least, I didn't now. When the little boy spoke, did you look to the right?

A. Not all the way to the right.

Q. How much did you look to the right?

A. Just about like that (indicating).

Q. Let's get that straight, if you will. Assuming, if you will, Mrs. Silver——

A. Yes.

Q. —that you are seated in the car. Just sit down, will you?

A. Yes.

Q. That you are seated in the car about the way you are now?

A. Yes.

Q. Looking straight down, the automobile would be looking straight down the road?

A. Yes, sir.

Q. Now, your husband would be seated about where I am?

A. Yes, sir.

Q. That is, this was a left-hand drive?

A. Yes, sir.

Q. And you were nearer the right-hand side of the road than he was?

A. Yes, sir.

Q. He was driving along with his hands on the wheel, was he?

A. Yes, sir.

Q. And the children were in back?

A. Yes, sir.

Q. Now, when the little boy spoke?

A. Yes, sir.

Q. "Daddy, look at the horses"——

A. Yes, sir.

Q. —you looked at the right?

[fol. 19] A. I didn't look exactly at the right. I just looked at the horses.

Q. Now, when the little boy speaks. "Daddy, look at the right——

A. Yes.

Q. —you looked at the right as far as you did then?

A. Right over there (indicating). I didn't look at the horses, but my face was turned in an angle.

Q. Well, turn your face the way it was then.

A. Like that.

Q. I see. Then what happened?

A. Mr. Silver—all of a sudden I heard a crash.

Q. Yes.

A. And——

Q. The little boy spoke, you turned slightly to the right——

A. Yes, sir.

Q. —and there was a crash?

A. Yes, sir.

Q. Who told you that Mr. Silver looked to the right?

A. Why, nobody had told me.

Q. You didn't see him.

A. Why, I didn't see him.

Q. No, and no one told you.

A. Why, nobody—nobody told me, but I—I could see the way the child was telling him to look, why he looked.

Q. You couldn't see the child, could you?

A. Why, no, I couldn't.

Q. You couldn't see Mr. Silver when you looked to the right, could you?

A. Why, I wasn't looking far enough to the right not to see him.

Q. Do you mean to tell the court and jury that, when you looked to the right, you could see whether or not Mr. Silver looked to the right?

A. Why, his seat——

Q. Yes or no, please. Could you see Mr. Silver; whether he looked to the right or not?

A. Why, not enough.

Q. So, when the boy spoke, you looked to the right and you couldn't see which way Mr. Silver looked, could you?

A. No, sir.

Q. And the next thing you knew, there was a crash?

A. Yes, sir.

Q. And no one has told you that Mr. Silver looked to the right?

A. Well—the little boy—well, when he told him to look he said that—he didn't tell me——

A. The little boy said "Look at the horses."

A. "Look at the horses, Daddy." Yes.

Q. And you looked and—you looked a little bit and the accident happened?

A. Yes, sir.

Q. You weren't knocked unconscious?
A. No, sir.

* * * * * * *

Q. How old are you, Mrs. Silver?
A. Twenty-eight.
Q. When were you twenty-eight?
A. First of January.

* * * * * * *

[fol. 20] BENJAMIN D. SILVER sworn by Mr. Gorman.

Direct examination.

By Mr. Reilly:

The Clerk: Your full name, please?
The Witness: Benjamin D. Silver.
The Clerk: You may be seated.
Q. Are you the defendant in this case?
A. I am.
Q. And were you in—in the month of September, last—the owner of an automobile?
A. I was.
Q. Have you registration certificate with you for that year?
A. I have.
Q. And have you your operator's license for that year?
A. Yes, sir.
Q. May I see them?

Mr. Reilly: Is there any question about them, Mr. Hadden?
Mr. Hadden: I don't know.
Mr. Reilly: All right.
Q. Is this your registration certificate for last year?
A. Yes, sir.
Mr. Reilly: I offer it. Offered as Exhibit B, your honor.
The Court: B.

(Registration certificate, Essex Coach, registration number A-9096, marked plaintiff's Exhibit B.)

(Operator's license, 1927, number 90,130, Benjamin D. Silver, marked plaintiff's Exhibit C.)

Q. Were you operating that car on September 11, 1927?

A. I was.

Q. Was it in collision with another car at Woodmont?

A. Several cars.

Q. Beg your pardon?

A. I hit several cars.

Q. You hit several cars. Was this the time your wife was in the car?

A. Yes.

Q. Sitting on your right?

A. Yes.

Q. Do you recall the time of the crash? Having in mind that now—question withdrawn. When you hit this other car, or several cars as you say, which way were you looking?

A. I was looking over to my right.

Q. To your right towards what?

A. I don't just get what you mean.

Q. Well, you were facing along New Haven Avenue, were you not?

A. Yes.

Q. And you say when the crash happened you were looking to your right.

A. I was looking over to my right.

Q. And not ahead. Is that correct?

A. Correct.

Q. Was the car that you hit standing or moving?

A. Well, I couldn't say.

[fol. 21] Q. Well, what do you mean—why? Why couldn't you say?

A. It must have been at a standstill.

Mr. Reilly: That's all.

Cross-examination.

By Mr. Hadden:

Q. You say you were looking to your right?

A. I was looking to my right.

Q. Why were you looking to your right?

A. Well, I was driving along my boy hollered "Oh, Daddy, look," and I looked over. No more than I looked over than I crashed.

Q. Your boy was where.

A. In the back seat.

Q. And your wife was seated alongside you?

A. Yes, sir.

Q. And the boy said "Oh Daddy, look." Did you look around to where the boy was?

A. I saw him pointing his finger (indicating).

Q. Well, did you look around to where the boy was? That's withdrawn. You don't mean you saw him—you had a mirror on your car, didn't you?

A. Yes.

Q. You didn't see him through that, did you?

A. No, sir.

Q. When the boy said, "Oh, Daddy, look," you looked around and saw him pointing his finger?

A. Yes.

Q. Now, which way was he pointing his finger?

A. Out of the car.

Q. Which side of the car?

A. Right-hand side.

Q. Then what did you do?

A. I turned around and looked.

Q. Wait a minute, please. I understood you to say you turned around?

A. Yes.

Q. You saw the boy pointing his finger out the right.

A. Yes.

Q. Then what did you do?

A. I looked.

Q. You looked to the right?

A. Yes.

Q. And then what happened?

A. Then, before I turned back, I had the crash.

Q. How fast were you going?

A. About fifteen or twenty miles.

Q. How far in back of the car ahead were you?

A. (Pause) I should say about *about* fifteen feet.

Q. Is that your signature (handing paper to the witness)?

A. It is.

Q. Did you sign that?

A. I did.

Q. Let me read you this—"Mrs. Silver was in front seat with me. Without any warning Raymond let out a yell and I turned to see what was the matter and as soon as I turned to look in rear my auto struck the car ahead of me." Is that true?

A. Yes.

Q. Well, I understood you to just say that your boy said "Oh, Daddy, look," you looked around, you saw him point-
[fol. 22] ing to his right, you looked to the right and before you turned back again you struck a car. Now, which was it?

A. Well, how long would it take?

Q. I don't know. I wasn't there. Which is true?

A. Well, no more than I turned, smash.

Q. Do you understand the question?

A. I don't think I did.

Mr. Hadden: Will you please read it, Mr. Whay?

(Last question read.)

Q. Was it as I have just asked the question, or was it what you have said here?

A. That would be right.

Q. And why did you say the other?

A. I don't see any difference between the two of them.

Q. You don't. You didn't say the other for the purpose of helping your wife, did you, get a verdict in this case?

A. No, sir.

Q. You don't want to see your wife get a verdict, do you?

A. Well (pause)——

Q. Can you answer that?

A. I can't.

Q. What's that?

A. I can't.

Q. You can't. Is that what you said?

A. Yes.

Q. Well, don't you know whether you want to see your wife get a verdict or not?

A. Well—yes.

Q. Do you want to see her get a verdict?
A. Yes.

Mr. Hadden: That's all.

Mrs. Mae Silver recalled.

Direct examination.

By Mr. Reilly:

Q. You may be seated, Mrs. Silver. I want to ask you how it happened that you came to be a passenger in this car? On the day, September 11th, the day that the accident occurred?

A. Well, I guess Mr. Silver had invited me out for a ride.

Mr. Reilly: That's all.

Cross-examination.

By Mr. Hadden:

Q. When did he invite you to take a ride?
A. Early in the afternoon.
Q. That is, when you and your husband went riding, you usually waited for an invitation from your husband?
A. Well, I don't, but——
Q. What did he say when he invited you?
A. He said, "Do you want to go for a ride?"
Q. What did you say?
A. I said "Yes."
Q. How did the children happen to come along?
[fol. 23] A. Well, the children always come with me.
Q. How did your brother happen to come along?
A. Well, because we didn't like to leave them at home.

Mr. Hadden: That is all.

[fol. 24] Stipulation re Exhibit, etc.

It is agreed between the parties that the exhibits may be used in appeal without printing, and it is further stipulated

and agreed to dispense with the printing of the evidence concerning the injuries (a statement of the proof offered of injuries being herewith submitted).

Evidence was offered by the plaintiff tending to prove that the plaintiff sustained three lacer*t*ations of the face, one clear across the nose, one below the left eye and another to the left of left eye, each about one inch long, which required eleven stitches to close, and which wounds have left permanent scars; that the lower lip was lacerated on the inside; that she sustained a severe shock and suffered and is still suffering from nervous prostration, and that as a result of this nervous condi*d*ition her menstrual periods arrive earlier and oftener and are unusually prolonged.

[Title omitted]

Colloquy Between Court and Counsel—March 28, 1928

Simpson, Judge: Mr. Reilly, I think, in this case, that I ought to direct a verdict for the defendant. It seems to me, upon any definition or interpretation of this statute, that I should give them, they could not reasonably return a verdict for the plaintiff. If they did, it would seem that I would have to set it aside.

At the most, you only have a case, it seems to me, of an ordinary kind of negligence. If the statute means anything at all it means more than that. It means practically a wilful or wanton act, or reckless disregard of the rights of others upon the highway. And besides, this other question of the proximate cause.

Mr. Reilly: Well, does your honor feel that his conduct, in order to have a guest collect, would have to be proved as criminal?

The Court: Well, I do not say that. No. Substantially so. I think heedlessness means more, as used in this statute, in connection with the terms therewith—in the context of the statute, means more than mere negligence.

[fol. 25] Mr. Reilly: Well, might not his turning his head aside be wilful?

The Court: What is that?

Mr. Reilly: Might not his turning his head and eyes from the direction in which he was going——

The Court: Wilful in the sense that he did it intentionally, that is all. But it was an inadvertence at that. The condition of the traffic there.

Mr. Reilly: I cannot find anywhere, your honor, any definition of "heedlessness" to include "wilfulness."

The Court: Yes, but he wasn't—the accident wasn't intentional.

Mr. Reilly: No, it wasn't intentional. He would not, certainly, intentionally injure his own family, but nevertheless one was injured through his inattentiveness.

The Court: It says "Unless such accident shall have been intentional on the part of the owner or operator."

Mr. Reilly: Yes.

The Court: Not, of course, that the injury must have been intentional, but the accident must have been intentional or the accident caused by his heedlessness or reckless disregard of the rights of others. I cannot disconnect the word "heedlessness," as used here, from the context of this statute, especially that which follows it. It says, "Or his reckless disregard of the rights of others." The legislature certainly intended to make some change in the law in reference to actions brought by passengers or guests in an automobile.

Mr. Reilly: Would your honor feel that it was a reckless disregard of the rights of these passengers for him to take his eyes from the direction he was going in; to look at ponies; to cause his car to travel on at fifteen or twenty miles an hour, knowing that another car was in front of him only fifteen feet

The Court: Not under the circumstances. I don't think that is a reckless act. You may call the jury, Mr. Sheriff.

(The jury resumed the jury box.)

[fols. 26 & 27] CHARGE TO JURY

The COURT: Gentlemen of the jury, I have decided to direct you to bring a verdict in for the defendant in this case. Of course my reasons for doing so are not particu-

larly—it is not really necessary for me to state, but for your information I will state this—that, in the first place, upon the testimony in the case I do not see how you could reasonably come to the conclusion, without speculation or guess, that the act of this defendant in inadvertently looking to his right was the proximate cause of the injuries to this plaintiff. Furthermore, by the Act of the last legislature, which was in force at the time of this accident, it is provided that no person transported by the owner or operator of an automobile shall have a cause of action for damages against such owner or operator of an automobile, unless the accident shall have been intentional on the part of such owner or operator, or caused by his heedlessness or reckless disregard of the rights of others. I do not see how it could be reasonably claimed that this accident was intentional on the part of this defendant, nor in view of the interpretation of the statute which the court would have to give you, I do not see how you could reasonably come to the conclusion that it was caused by his heedlessness or the reckless disregard of the rights of others. So I have decided to direct you to return a verdict for the defendant. You may retire and prepare your verdict.

I hereby certify that the within and foregoing is a true copy of the official stenographic notes (excepting the testimony as to the injuries) taken in the case of Mae Silver v. Benjamin Silver, tried in March, 1928, before Honorable Earnest C. Simpson, Judge, and a jury.

Mabel W. Carter, Official Stenographer, Superior Court, New Haven County.

ORDER APPROVING STATEMENT OF EVIDENCE

Certified and made part of the record.

Simpson, Judge.

[fol. 28] IN SUPREME COURT OF ERRORS OF CONNECTICUT

MAE SILVER

vs.

BENJAMIN SILVER

Third Judicial District, New Haven, June Term, 1928

Wheeler, C. J., Maltbie, Haines, Hinman, and Banks, Js.

Action to recover damages for personal injuries alleged to have been caused by the negligence of the defendant, brought to the Superior Court in New Haven County and tried to the jury before Simpson, J. The court directed a verdict for the defendant and from the judgment rendered thereon the plaintiff appealed. No error.

David M. Reilly and Herman Levin, for the appellant (plaintiff).

William L. Hadden and Ellsworth B. Foot, with whom, on the brief, was David E. Fitzgerald, for the appellee (defendant).

OPINION

BANKS, J.:

The jury could reasonably have found the following facts: The plaintiff is the wife of the defendant and upon his invitation was a passenger in an automobile operated by him. There was considerable traffic upon the road in both directions and the defendant was driving in the line of traffic behind a number of other cars at a speed of between fifteen and twenty miles an hour. His son was in the rear seat of the car and called out "Oh, daddy, look at the horses," at the same time pointing to some horses that were being ridden in a vacant lot upon the right side of the road. The defendant turned and looked to the right and immediately crashed into a car which had been proceeding about fifteen feet in front of him, as a result of which the plaintiff received the injuries for which she seeks to recover. The defendant was called as a witness by the plaintiff and testi- [fol. 29] fied on her behalf. There was no conflict between

the evidence of the plaintiff and that of the defendant as to how the accident happened and their evidence was the only evidence in the case as to the conduct of the defendant. At the close of the plaintiff's case the court directed a verdict in favor of the defendant upon two grounds: (1) That the plaintiff had failed to prove that the act of the defendant in inadvertently looking to the right was the proximate cause of her injuries, and (2) that the collision was not caused by the defendant's "heedlessness or his reckless disregard of the rights of others." The only evidence as to the operation of the cars in front of defendant's car was that of the occupant of the third car ahead of his car that the traffic had stopped and her car was standing still when it was struck from the rear. Upon the evidence before it we think the jury might reasonably have reached the conclusion that the act of the defendant in looking to the right was the proximate cause of the collision and that the court was not justified in directing a verdict for the defendant upon the first ground stated. Its direction of a verdict for the defendant upon the second ground stated was based upon the court's construction and application to the facts of this case, of the provisions of chapter 308 of the Public Acts of 1927, which is entitled: "An Act releasing owners of motor vehicles from responsibility for injuries to passengers therein." Section 1 of the Act reads as follows: "No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others." [fol. 30] That a wife riding in her husband's car at his invitation is a guest within the meaning of the statute is not questioned by the defendant. We had held, in line with the weight of authority elsewhere, that the owner of an automobile who invites a guest to ride with him is bound to exercise ordinary or reasonable care in the operation of the vehicle and is liable to the guest who is injured as a result of his failure in this duty. Dickenson v. Connecticut Co., 98 Conn. 87, 118 Atl. 518. The statute which we have quoted relieves the owner or operator of such vehicle from any

liability to a guest for damages resulting from its operation unless the accident causing them was "intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others." It is the contention of the plaintiff that the statute effects no change in the liability of the owner or operator to his guest, and that the former is still liable if the accident is caused by his "heedlessness" which the plaintiff claims is the equivalent in meaning of carelessness or negligence. He further claims that, if the statute should be construed as exempting from liability for ordinary negligence, it would then be unconstitutional because it is an unjust discrimination between persons of the same class. The word "heedlessness" signifies a failure to take heed and is a synonym of carelessness. Standing by itself it connotes a lack of care substantially identical with that indicated by the word "negligence." The question for our consideration, however, is not the meaning of a single word in an abstract sense, but its meaning with due regard to its context and the meaning of the entire phrase or sentence in which it [fol. 31] appears. We must assume that the legislature was familiar with the decisions of this court permitting a recovery by a guest in an automobile for injuries resulting from the negligence of the owner or operator, and that when it undertook to legislate upon that subject it was with the purpose of making some change in the existing law. Stamford v. Stamford, 107 Conn. 596, 141 Atl. 895. Such purpose is pretty clearly indicated in the title of the Act and in the first clause of the first section which provides that no guest shall have a cause of action against the owner or operator of the car in case of accident. Then follows a statement of the exceptions to the general rule—"unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others." If the phrase "or caused by his heedlessness" is to be taken as strictly disjunctive as by itself constituting an exception to the general rule of nonliability, and "heedlessness" is held to be synonymous with "negligence," the entire statute is nugatory and effects no change whatever in the law as it existed before its enactment. We do not think that is a sensible construction of the statute. It would utterly fail to effectuate the obvious

purpose of the legislature in some way to limit the liability of the owner or operator of a motor vehicle to one who was riding in it as his guest. The language of the statute indicates an intention to limit such liability to two classes of cases, first, when the accident was caused by intentional misconduct, and second, when it was caused by heedless or reckless disregard of the rights of others, meaning thereby something more than the mere failure to exercise the care of a reasonably prudent man which is the familiar defini- [fol. 32] tion of negligence.

The plaintiff contends that the statute, if thus construed, denies to guests in motor vehicles the equal protection of the laws and, therefore, violates constitutional guaranties. Legislation under the police power of the State is not confined to public health, safety or morality, but may extend to matters in the interest of the public welfare or convenience. State v. Bassett, 100 Conn. 430, 123 Atl. 842. "A large discretion is necessarily vested in the legislature to determine not only what the interests of public convenience and welfare require, but what measures are necessary to secure such interests. Cotter v. Stoeckel, 97 Conn. 239, 244, 116 Atl. 248; Young v. Lemieux, 79 Conn. 434, 440, 65 Atl. 600. The legislative department is the judge, within reasonable limits, to determine what public convenience and public welfare require, and the wisdom of its legislation is not the concern of the courts. It is our duty to sustain an Act unless its invalidity is, in our judgment, beyo-d a reasonable doubt. Beach v. Bradstreet, 85 Conn. 344, 82 Atl. 1030; State v. Lay, 86 Conn. 141, 145, 84 Atl. 522; Cooper v. Telfax, 4 U. S. (4 dau.) 14, 19." State v. Bassett, supra, p. 432. That the State may under the police power regulate travel upon the public highways cannot be doubted. Jones v. Brin, 165 U. S. 180, 182. This includes the power to regulate the use of motor vehicles. Commonwealth v. Boyd, 188 Mass. 79. "That the regulation of motor vehicles and motor vehicle traffic is a proper subject for legislative action under the police power is not questioned." Cotter v. Stoeckel, 97 Conn. 239, 244, 116 Atl. 248. Ever since motor vehicles have come into general use they have been classified separately from horse-drawn vehicles and the power of the legislature to impose upon their owners and operators [fol. 33] duties not placed upon others has been generally

upheld. Westfall v. Chicago, 280 Ill., 318; Garrett v. Turner, 235 Pa. St. 383; Barry on Automobiles, Sec. 30 and cases cited. The plaintiff's contention is that the statute makes an unreasonable classification between the guest in an automobile and the guest in any other mode of conveyance or in any other place, thus depriving him of the equal protection of the law. Assuming, as we must, the power of the legislature to regulate the operation of motor vehicles, that includes the power to enact legislation affecting the reciprocal rights and duties of all who use them, owners, operators or occupants, when these rights and duties arise out of such operation. The duty which the owner or operator owes to his guest in the operation of the automobile being a legitimate subject-matter of legislation the guest is not deprived of the equal protection of the law because that duty is made to vary from that owed to a house guest or a guest in some other mode of conveyance. The basis of the classification is the automobile, and the Act affects alike all those who may elect to be transported in it as guests of its owner or operator. This classification is within the wide range of discretion which the legislature has, since it has a fair and substantial relation to the object of the legislation which is the control or regulation of automobile traffic upon our public highways. Royster v. Virginia, 253 U. S. 412, 415; Walp v. Mooar, 76 Conn. 515, 521, 57 Atl. 277. Primarily the question of classification is for the legislature and the courts will not interfere unless the classification is clearly unreasonable. People v. Sisk, 297 Ill. 314: "A statute does not constitute a denial of the equal protection of the laws merely because it extends to [fol. 34] some persons privileges denied to others, or imposes restrictions or liabilities on some but not on others. Such discriminations render legislation void when they are arbitrary or unreasonable but not when they are based on real difference in the subject-matter and are reasonable in extent." 12 Corpus Juris, 1159; Patsone v. Penn. 232 U. S. 138, 144; Vigeaux v. Postal Telegraph Cable Co. (Mass.) 157 N. E. 651, 53 A. L. R. 867.

The statute imposes upon the owner or operator of a motor vehicle a different degree of care toward a guest than he is required at common law to exercise toward a passenger who pays for his transportation. Such a dis-

tinction between the duty imposed in the case of the gratuitous performance of services and the performance of them for hire is to be found running through many fields of the law, as for example between the gratuitous bailee and the bailee for hire, the common carrier and the private driver, the innkeeper and the ordinary social host. In some jurisdictions it is held that the owner or operator of a motor vehicle is liable to a guest only in the case of gross negligence, in analogy to the rule prevailing in the case of a gratuitous bailment of goods. Massoletti v. Fitzroy, 228 Mass. 487, 118 N. E. 168. There is inherent justice in the requirement that one who undertakes to perform a duty gratuitously should not be under the same measure of obligation as one who enters upon the same undertaking for pay, and the reason for a distinction between the measure of liability in the case of gratuitous bailment and gratuitous transportation is not obvious. It seems to us that the legislature was acting well within the limits of the police power in making a distinction between the degree of care to be exercised by the owner or operator of a motor vehicle toward a guest and that to be exercised toward one who pays for his transportation.

[fol. 35] The question remains whether, upon the evidence, the jury could reasonably have found that the accident was caused by the defendant's heedless or reckless disregard of the rights of others. The defendant's family were in the car with him, which so far as appears, was being operated at a reasonable speed and in a careful manner. The child on the rear seat called out and the defendant momentarily turned to look toward the right and immediately crashed into the car in front of him. There was no conflict in the testimony to be resolved by the jury. The probative effect of these undisputed facts must be tested by the standard fixed by the statute. We do not think it could reasonably be said that the defendant's conduct, though perhaps negligent, was such as to indicate such a heedless or reckless disregard of the rights of others as to justify a verdict in favor of the plaintiff. The court was, therefore, right in directing a verdict for the defendant.

There is no error.

In this opinion Maltbie and Hinman, Js., concurred; Wheeler, C. J., and Haines, J., dissented.

[fol. 36] IN SUPREME COURT OF ERRORS OF CONNECTICUT

[Title omitted]

DISSENTING OPINION

WHEELER, C. J. (dissenting):

Upon the constitutionality of the statute I am obliged to differ with my brethren. They say "The basis of the classification is the automobile." This is a misconception of the statute. The classification is not as to the automobile, but as to the guest in the automobile, taking away from him a right of action for ordinary negligence which the guest in every other mode of conveyance still enjoys under the law. In my opinion the statute deprives the guest in the automobile of the equal protection of the laws.

What then does the equal protection of the law mean? We have held under our Bill of Rights that, "No legislative act is law, that clearly and certainly is obnoxious to the principle of equality in rights thus solemnly made the condition of all exercise of legislative power." State v. Conlon, 65 Conn. 478, State v. Porter, 94 Conn. 639, 643.

The equal protection of the laws guaranteed by the Fourteenth Amendment does not reach beyond the meaning of the declaration found in our Bill of Rights, "That all men when they form a social compact, are equal in right" as we have construed this language. "Class legislation discriminating against some and favoring others is prohibited by this provision of the amendment," "but legislation which, in carrying out a public purpose, is limited in its application," "either in the objects to which it is directed, or by the territory within which it is to operate," "if within the sphere of its operation it affects alike all persons similarly situated, is not within" this provision "of the amendment." Babier v. Connelly, 133 U. S. 27, 32, Hayes v. Mo., 120 U. S. 68; Truax v. Corrigan, 257 U. S. 312, 333.

[fol. 37] The constitutional guaranty "does not prevent classification, but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation." Atch. and St. F. Ry. v. Vosburg, 238, U. S. 56; Southern Railroad

Co. v. Greene, 216 U. S. 400. He who assails the classification must assume the burden of showing that it does not rest upon any reasonable basis, and a court must assume the existence of any state of facts which can reasonably be conceived of as existing at the time of the enactment of the law. Bachtel v. Wilson, 204 U. S. 364.

The characteristics which will serve as a basis for a reasonable classification must show such a difference as to fairly justify the division into classes with separate legislation as to each. Legislation cannot arbitrarily divide a class into two parts and constitute a different rule of law governing each of the parts of the severed class. Fountain Park Co. v. Hensler, (Ind.) 155 N. E. 405, "A proper classification must embrace all who naturally belong to the class, all who possess a common disability, attribute or qualification, and there must be some natural and substantial difference germane to the subject and purpose of the legislation between those within the class included and those whom it leaves untouched." C. M. & St. P. R. Co. v. Webster, 102 C. C. A. 65; People of State of N. Y. v. Beakes Dairy Co., 222 N. Y. 416.

In Atch. & S. F. Ry. v. Vosburg, 238 U. S. 56, a state statute imposed reciprocal burdens on both carrier and shipper, but provided that in the case of delinquency on the part of the carrier the shipper might recover an attorney's fee, but did not provide that in the case of the delinquency of the shipper the owner might recover an attorney's fee, was held to deny the carrier the equal pro-[fol. 38] tection of the law granted by the Fourteenth Amendment.

In Quaker City Cab Co. v. Penn., 48 Sup. Ct., Rep. 553, a state statute imposed a tax on the gross receipts of taxicab corporations engaged in domestic and foreign business where the receipts accrued from intrastate business, but did not impose a corresponding tax on individuals or partnerships engaged in a like business; it was held to be a violation of the equal protection clause of the Fourteenth Amendment.

A Massachusetts statute imposed absolute liability upon telegraph companies for injuries caused by their poles, wires and apparatus, while not applying to others utilizing similar apparatus, was held unconstitutional in depriving

telegraph companies of the equal protection of the laws. Vigeant v. Postal Tel. & Tel. Co. (Mass.) 157 N. E. 651. In State v. Goodwill, 33 W. Va. 179, a state statute which prohibited miners and manufacturers from paying in store orders was held in violation of the equal protection of the laws provisions.

The guest statute separates gratuitous guests in automobiles from other gratuitous guests in every other possible situation and in every other mode of conveyance or transportation. It cannot be seriously claimed that any public purpose is served by this classification. It does not tend to increase the safety of traffic in any degree, on the contrary the tendency would be the reverse, since the transportation owner or operator of the car would be relieved of liability to the guest for his own ordinary negligence in its operation.

It merely relieves the operator and owner from his own ordinary negligence. It does not affect all persons simi- [fol. 39] larly situated. Guests in other modes of conveyance are liable to injury through the ordinary negligence of the transporting operator or owner of the conveyance. The mere fact that the danger of injuring the guest may be greater in the automobile than in the other mode of conveyance does not afford a basis for valid classification. That does no more than to limit the right of action of a part of one class for the benefit of someone who is not a member of either part of the class. There could not well be a clearer violation of the equal protection of the law constitutional provision.

There is another feature of this statute which requires consideration. Cooley on Constitutional Limitations (8th Ed.) 806 note, says: "The legislature may suspend the operation of the general laws of the state, but when it does so the suspension must be general, and cannot be made for individual cases or for particular localities * * * but everyone has a right to demand that he be governed by general rules, and a special statute which without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free

governments." The Maryland court held in Carozza v. Federal Finance & C. Co., (Md.) 131 Atl. 332: "The only restriction upon the power of the legislature to suspend the operation of a general law of the state is that the power when exercised must result in a suspension which is uniform, both in the privileges conferred and the liability imposed in its application to all persons and property similarly situated and in like conditions within either the polical territory or the class affected, and which shall not be arbitrary classification, but one supported by some sound [fol. 40] and defensible reason inherent in the subject-matter."

The Illinois court in Mallett v. People, 117 Ill. 274, thus announced its adherence to this principle; "The right of any individual must stand or fall by the same rule or law that governs every other member of the body politic, or land, under similar circumstances; and every partial or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were it otherwise, odious individuals and corporations would be governed by one law; the mass of the community and those who made the law, by another; whereas the like general law affecting the whole community equally could not have been passed." See also Atch. & S. F. Ry. v. Vosberg, supra; Griffith v. Conn., 218 U. S. 563.

The only case which we find nearest to that before us is Birmingham & T. Ry. & Utilities Co. v. Carpenter, 194 Ala. 141. The statute in that case provided that the contributory negligence of the operator or driver of a motor vehicle shall be imputed to every occupant of it except passengers paying fare in a motor vehicle regularly used for public hire. The trial court ignored this statute upon the theory that the same was unconstitutional. In the course of its opinion the court said: "The doctrine is well settled in this and most of the other states, as well as by the Federal Courts, that the contributory negligence of one in charge, or control of, a train, car or other vehicle, cannot be visited upon a person who is a passenger therein, whether for reward or not, unless the person so riding has charge or control of the vehicle, or over the person

driving or operating the same." And thereafter the court held: "Section 34, not only discriminates against persons riding in motor vehicles in favor of those riding in all other vehicles under similar conditions, but it discriminates be- [fol. 41] tween those who ride in a motor vehicle for hire. In other words, if a person rides in a motor vehicle which is regularly used for hire, he is not responsible for the negligence of the driver or operator; yet if he rides in one for hire he is responsible unless said vehicle is regularly operated for hire. The section denies an equal protection of the law to all persons similarly situated and is an unwarranted discrimination * * * (5) Of course, this constitutional guaranty does not forbid the legislature from making a reasonable classification in the operation of our laws; but such a classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed, and classification cannot be arbitrarily made without any such substantial basis, arbitrary selection it has been said, cannot be justified by calling it classification."

The general rule of our common law gave to every gratuitous guest in an automobile an action against him who invited him to ride for injuries suffered by him through the ordinary negligence of the operator of the automobile. This right of action cannot be taken away from the guest in the automobile by a law applicable to the guest in the automobile but not to all other guests transported in other modes of conveyances upon the invitation of another. Privileges conferred by law cannot be taken away from the guest in the automobile while left to the guest in other forms of conveyance. Such a classification does not rest upon a fair or substantial basis; it does not affect alike all guests similarly situated. It is unreasonable in its differences and essentially arbitrary. It, therefore, denies to this plaintiff the equal protection of the law. For this reason, in my opinion, the statute was invalid, and the trial court was in error in directing a verdict.

In this opinion Haines, J., concurred.

[fol. 42] In Supreme Court of Errors of Conneticut

Mae Silver, of Hamden,

vs.

Benjamin Silver, of Hamden

On Appeal from the Superior Court, New Haven County

Judgment

This appeal by the plaintiff claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this court, was allowed by the Superior Court for New Haven County on the 19th day of April, A. D. 1928, and came to this Court, at its term held at New Haven on the first Tuesday in June A. D. 1928, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellant his costs taxed at $—.

Date of judgment: September 28th, 1928.

By the Court.

Alfred N. Wheeler, Clerk.

[fol. 43] [File endorsement omitted.]

In Supreme Court of Errors of Connecticut

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed Dec. 19, 1928

Petition for Appeal

Considering herself aggrieved by the final decision of the Supreme Court of Errors of the State of Connecticut in the above entitled cause, the appellant therein, Mae Silver

hereby prays that an appeal be allowed to the Supreme Court of the United States herein and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

And the said Mae Silver assigns the following errors in the record and proceedings in said case:

1. The Supreme Court of Errors of the State of Connecticut erred in deciding that Sec. 1, Chapter 308 of the Public Acts of 1927 of Connecticut is a legitimate exercise of the Police Power and therefore not in violation of the Fourteenth Amendment of the United States Constitution.

2. The Supreme Court of Errors of the State of Connecticut erred in deciding that the classification made by said section and chapter is not unreasonable and in violation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

[fol. 44] 3. The Supreme Court of Errors of the State of Connecticut erred in deciding that said section of said chapter was not so unreasonable and arbitrary in its grant of privileges to certain persons, including appellee, and its denial of protection to certain other persons including appellant, as to deprive the appellant of the equal protection of the laws guaranteed to her under the Fourteenth Amendment of the Constitution of the United States.

4. The Supreme Court of Errors of the State of Connecticut erred in deciding that the appellant who was injured by the claimed negligence of the appellee in the operation of a certain automobile in which she was riding as a gratuitous passenger was on account of her position as such gratuitous passenger in an automobile deprived by said Section 1, of chapter 308 of the 1927 Public Acts of Connecticut, of the cause of action she would otherwise have against the appellee for such negligence and that this deprivation was not in violation of the appellant's Federal Constitutional rights.

5. The Supreme Court of Errors of Connecticut erred in deciding that said Section and chapter in separating gratuitous guests in automobiles as a class from gratuitous guests in other vehicles, and applying to that class a different rule of law than the general law applicable to all other gratuitous passengers did not deprive the appellant who was such a gratuitous passenger in an automobile, of the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

6. The Supreme Court of Errors of Connecticut erred in deciding that said section and chapter were not unconstitutional and void as a violation of the Fourteenth Amendment of the Federal Constitution.

For which errors the Appellant, Mae Silver, prays that the said judgment of the Supreme Court of Errors of the State of Connecticut, dated September 28, 1928 in the above [fols. 45 & 46] entitled cause, be reversed and a judgment rendered in favor of the said appellant, and for costs.

Arthur B. O'Keefe, Herman Levine, David M. Reilly,
Thomas R. Robinson, Counsel for Appellant.

[fol. 47] In Supreme Court of Errors of Connecticut

[Title omitted]

Order Allowing Appeal—Filed Dec. 19, 1928

The Appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the Judgment made and entered in the above entitled suit by the Supreme Court of Errors of the State of Connecticut on the 28th day of September, 1928, and from each and every part thereof, and having presented and filed on this day her petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statute and rules of the Supreme Court of the United States in such case made and provided.

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of Errors of the State of

Connecticut in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of Errors of the State of Connecticut, in the Third Judicial District, prepare and certify a transcript of the record, proceedings and judgment in this cause, and transmit the same to the Clerk of the Supreme Court of the United States so that he shall have the same in said Court within 25 days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of two hundred and fifty dollars.

[fols. 48-50] Dated at Bridgeport, Connecticut, this 17 day of December, 1928.

George W. Wheeler, Chief Justice of the Supreme Court of Errors for the State of Connecticut.

[fol. 51] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Jan. 11, 1929

Comes now the appellant in the above entitled cause and states that the points upon which she intends to rely in this case are as follows:

Point 1. That the Supreme Court of Errors of the State of Connecticut erred in deciding and holding that Section 1, Chapter 308 of the Public Acts of 1927 of Connecticut is a legitimate exercise of the police power, and therefore not in violation of the Fourteenth Amendment of the United States Constitution.

Point 2. That the Supreme Court of Errors of the State of Connecticut erred in deciding that the classification made by said section and chapter is not unreasonable and in violation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Point 3. That the Supreme Court of Errors of the State of Connecticut erred in deciding and holding that the said section of said chapter was not so unreasonable and ar-

bitrary in its grant of privileges to certain persons, including the appellee, and its denial of protection to certain other persons including the appellant as to deprive the appellant of the equal protection of the laws guaranteed to her under the Fourteenth Amendment of the Constituton.

[fol. 52] Point 4. That the Supreme Court of Errors of the State of Connecticut erred in deciding and holding that the appellant who was injured by the negligence of the appellee in the operation of a certain automobile in which she was riding as a gratuitous passenger, was, on account of her position as such gratuitous passenger in an automobile, deprived by said Section 1 of chapter 308 of the 1927 Public Acts of Connecticut, of the cause of action she would otherwise have against the appellee for such negligence; and that this deprivation was not in violation of the appellant's Federal Constitutional rights.

Point 5. That the Supreme Court of Errors of the State of Connecticut erred in deciding that said section and chapter, in separating gratuitous guests in automobiles as a class from gratuitous guests in other vehicles, and applying to that class a different rule of law than the general law applicable to all other gratuitous passengers, did not deprive the appellant, who was such a gratuitous passenger in an automobile, of the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

And the appellant further states that only the following parts of the record as filed in this Court need be printed by the Clerk for the hearing of the case.

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Answer	5
Defendant's verdict	8
Judgment	9
Motion to set aside the verdict	10
Plaintiff's appeal omitting certificate of assistant clerk	11
Testimony:	
[fol. 53](a) The testimony of Mae Silver on direct	12 to 15

Title of paper	Record page
(b) Testimony of Benjamin Silver on direct	20 to 21
(c) Testimony of Mae Silver on direct	22
Stipulation and ruling of the trial Court omitting the certificate of the official stenographer	24 to 26
Opinion	28 to 36
Dissenting opinion	36 to 42
Judgment of the Supreme Court of Errors	42
Petition for appeal, assignment of errors, and prayer for reversal	43 to 45
Order allowing the appeal	47

Mae Silver, by Arthur B. O'Keefe, Her Attorney.

Service of the above statement of points, and designation of the parts of the record to be printed is hereby admitted.
New Haven, Conn., January —, 1929.
William L. Hadden, Attorney for the Appellee.

[fol. 53½] [File endorsement omitted.]

[fols. 54 & 55] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD DEEMED MATERIAL, BY THE APPELLEE, TO BE PRINTED—Filed Jan. 30, 1929

Testimony:

(a) Testimony of Mae Silver, on cross examination. 15 to 19
(b) Testimony of Benjamin Silver, on cross examination 21 to 22
(c) Testimony of Mae Silver, on cross examination. 22 to 23

Benjamin Silver by Benjamin Grady, His Attorney.

[fol. 56] [File endorsement omitted.]

Endorsed on cover: File No. 33,932. Connecticut Supreme Court of Errors. Term No. 623. Mae Silver, appellant, vs. Benjamin Silver. Filed January 11th, 1929. File No. 33,932.

FILE COPY

FEB 6 19
CHARLES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 24

MAE SILVER,
Appellant

vs.

BENJAMIN SILVER,
Appellee

STATEMENT OF THE BASIS OF JURISDICTION

ARTHUR B. O'KEEFE,
DAVID M. REILLY,
HERMAN LEVINE,
THOMAS R. ROBINSON,
153 Court Street,
New Haven, Connecticut,
Attorneys and Counsel for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

MAE SILVER,
Appellant

vs.

BENJAMIN SILVER,
Appellee

No. 623

STATEMENT OF THE BASIS OF JURISDICTION

Pursuant to Paragraph 1 of Rule 12, the appellant in the above entitled cause hereby submits the basis upon which it is contended that this Court has jurisdiction to review the judgment herein appealed from.

A

The statutory provision relied on is Judicial Code, Section 237 as amended by the Act of February 13, 1925; 43 Stats. 937; Par. 344, Tit. 28 U. S. C.

B

The date of the judgment to be reviewed is September 28, 1928, (R-42). The application for appeal was presented and allowed on the 17th of December, 1928, (R-47 and 48).

C

The judgment of the Supreme Court of Errors of the State of Connecticut (R-42) is final and of the highest court of the State in which a decision could be had. There was drawn in question

the validity of a Statute of the State of Connecticut on the ground that said statute violated the Fourteenth Amendment to the Federal Constitution because it was discriminatory, unreasonable, and deprived the appellant of the equal protection of the laws.

The Trial Court directed a verdict against the appellant (R-8) because of the Statute, Chap. 308 of the Public Acts of Connecticut, 1927, the validity of which is herein questioned, (R-24, 25, and 26). An appeal from the judgment entered on this verdict (R-11) brought to the Supreme Court of Errors of the State of Connecticut, the question of the constitutionality of this statute, where it was urged and decided. (R-32, 33, 34, 35.) Attention is called to the dissenting opinion of Chief Justice Wheeler, concurred in by Justice Haines (R-36 to 41 inclusive). The decision was in favor of the validity of the Statute (R-34 and 42) and adverse to the appellant herein.

D

Cases sustaining the jurisdiction are:

Fox v. *Washington*, 236 U. S. 273.

New Orleans and N. E. Ry. Co. v. *Scarlet*, 249 U. S. 528.

Miedreich v. *Lauenstein*, 232 U. S. 236.

Southern Railway Company v. *Kentucky*, 274 U. S. 76.

Millsaps College v. *City of Jackson*, 275 U. S. 129.

Arthur B. O'Keefe

Attorney for Appellant.

FILE COPY

FILED
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CHARLES ELMORE CROP
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 24.

MAE SILVER

Appellant,

vs.

BENJAMIN SILVER.

BRIEF FOR APPELLANT

THOMAS R. ROBINSON,
DAVID M. REILLY,
HERMAN LEVINE,
ARTHUR B. O'KEEFE,
New Haven, Connecticut,

Attorneys for Appellant.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

MAE SILVER,
Appellant,
vs.
BENJAMIN SILVER.

No. 24.

BRIEF OF APPELLANT

Reference to Official Report of Opinion Below.

The opinions delivered in the Supreme Court of Errors are printed in 108 Conn. 371, and also in this record (R. 25 and 31).

Statement of the Case.

The appellant is the wife of the appellee. Upon his invitation she became a passenger in an automobile operated by him on a highway in Connecticut, where there was considerable traffic in both directions. The appellee allowed his attention to be diverted from the operation of the automobile by someone other than the appellant, and as a result collided with another vehicle immediately in front of him causing the injuries to the appellant for which she sued in the Superior Court for New Haven County, Connecticut (R. 1).

The case was tried to a jury, which returned a verdict, by the direction of the Court for the appellee (R. 3). The Court

directed the verdict on two grounds (R. 26); (1) that it had not been shown that the appellee's conduct was the proximate cause of the collision, which is immaterial here, and was held unwarranted by the Supreme Court of Errors on appeal (R. 26) and (2) that the conduct of appellee did not come within the provisions of Chapter 308 Public Acts of Connecticut of 1927, which is as follows:

"An Act Releasing Owners of Motor Vehicles from Responsibility for Injuries to Passengers therein.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

SECTION 2. This act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger being transported by such public carrier or by such owner or operator."

As construed by the trial court (R. 22) and the Supreme Court of Errors on appeal (R. 27 and 28), this statute took from the appellant her cause of action for ordinary negligence against the appellee, and made it necessary for her to show something more than such conduct to enable her to recover.

The validity of the statute so construed, was assailed by the appellant as a violation of the Constitutional guarantees accorded her by the 14th Amendment (R. 28). The statute was sustained against this attack, by a court divided three to two (R. 30). From this decision that Chapter 308 Public Acts of Connecticut 1927, does not violate her rights guaranteed by the 14th Amendment of the Federal Constitution this appeal is taken.

Specification of errors urged.

We urge the errors set out in the statement of points to be relied on (R. 39) or of the Errors assigned (R. 37) Errors 1 to 5 inclusive.

Argument.

Summary:

Appellant, had under the law of Connecticut, along with all other gratuitous guests in conveyances a cause of action against anyone negligently injuring her.

Public Acts of Connecticut, Chapter 308, 1927, deprives her of this cause of action against the owner or operator of a motor vehicle in which she is a gratuitous guest, and particularly the appellee.

The statute works this deprivation to the appellant while leaving a cause of action for negligence to other persons similarly circumstanced.

The classification made by such a statute must have a reasonable and substantial relation to the object of the legislation.

Here there is no such relation. The classification at most rests on a mere difference without other basis.

Enactments under the Police Power must conform to the Constitutional limits placed by the 14th Amendment.

This act has no conceivable relation to the legitimate sphere of the Police Power.

The analogy between the gratuitous passenger in an automobile and a gratuitous bailment is not sound.

In the absence of a reason of paramount public interest it is against public policy to deprive a person of a cause of action for tort committed against him.

Such deprivation, if within the power of government at all, must be universal so far as persons in the same circumstances are concerned.

The statute deprives the appellant of the equal protection of the laws, violates the Constitution of the United States, and should be declared invalid.

POINT 1.

Argument Proper.

The Common Law of Connecticut gave to a guest in any conveyance, who was injured by the negligence of the operator or owner of such conveyance, a cause of action. The duty owed to such guest was the observance of ordinary care.

Dickerson v. *Connecticut Co.*, 98 Conn. 87.

POINT 2.

Chapter 308 P. A. Conn. 1927 as construed by the Court below takes from the appellant this cause of action against the appellee, on the ground that he was the operator of a motor vehicle in which she was a guest, thus cutting her off from all other guests in others modes of conveyance and more than that, from those guests in motor vehicles expressly excepted by the second section of the statute, supra.

POINT 3.

The classification made by such a statute must have a reasonable and adequate relation to the object of the legislation.

Atch. T. & St. Fe Ry. v. *Vosburg*, 238 U. S. 56.
Fountain Park Co. v. *Hensler*, 199 Ind. 95.
C. M. & St. P. R. R. Co. v. *Westby*, 102 C. C. A. 65.
People of State of N. Y. v. *Beakes Dairy Co.*, 222 N. Y. 416.
Quaker City Cab Co. v. *Penn.*, 277 U. S. 389.
Southern R. R. Co. v. *Greene*, 216 U. S. 400.
Gulf, Colorado & Sante Fe Ry. v. *Ellis*, 165 U. S. 150.
Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32.
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Barbier v. *Connolly*, 113 U. S. 27.
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POINT 4.

There is no such basis for this classification.

The decisions of this court and courts throughout the land where legislation has been condemned as attempting classification without such a basis show situations affording a much more substantial reason for distinction. This classification does not serve any public purpose. It tends in no way to increase the safety of traffic but on the contrary, can have no other effect than to increase it hazards.

The unsuccessful distinctions made between corporations domestic and foreign in *Southern R. R. Co.* v. *Greene,* 216 U. S. 400, and *Power Mfg. Co.* v. *Saunders,* 274 U. S. 490; between a corporation doing no business in a state, and those doing business there in *F. R. Royster Guano Co.* v. *Commonwealth of Va.,* 253 U. S. 412; between corporations and individuals in *Quaker City Cab Co.* v. *Commonwealth of Penn.,* 277 U. S. 389; and *Frost* v. *Corporation Commission,* 278 U. S. 515; between mortgage loans of varying terms in *Louisville Gas & Electric Co.* v. *Coleman,* 277 U. S. 32; between gifts *inter vivos* made at certain time before death, in *Schlesinger et al.* v. *Wisconsin,* 270 U. S. 230; between railroads as defendants and other defendants in *Gulf, Colorado and Santa Fe Ry.* v. *Ellis,* 165 U. S. 150 and *Atchison T. & S. F. Ry.* v. *Vosburg,* 238 U. S. 56; between the relation of former employer and employee and persons not in such relation, in *Truax* v. *Corrigan,* 257 U. S. 312; between telegraph companies and others using similar equipment in *Vigeant* v. *Postal Tel. Cable Co.,* 260 Mass. 335; between motor vehicles of varying weights and usages in *Lossing* v. *Hughes Texas Civil Appeals 1922,* 244 S. W. 556, *Consumer's Co.* v. *Chicago,* 298 Ill. 339; *Franchise Motor Freight Assn.* v. *Seavey,* 196 Cal. 77, and *Kellaher* v. *City of Portland,* 57 Oregon 575, and between miners and manufacturers and other persons in *State* v. *Goodwill,* 33 W. Va. 179, are all of a more substantial nature, than the classification attempted by

this statute. The opinion of the court below (R. 29) contends that the distinction is based on the automobile and has a "fair and substantial relation to the object of the legislation which is the control or regulation of automobile traffic upon our public highways." The control of traffic can have but as its object the promoting of safety as pointed out in *H. W. Hess* v. *Leo Pawloski*, 274 U. S. 352. A statute whose only effect must be the reverse cannot rest on this basis. Were the rule of legislative power that which follows from the reasoning of the opinion a statute relieving the owner or operator from civil and criminal responsibility for even intentional injury or death must be upheld.

In this connection attention is drawn to the wording of the statute. It is not confined in its effect to the mishaps arising out of travel but is obviously broad enough to cover injury arising from an accident of any kind, so long as the tort-feasor is the owner or operator of a motor vehicle in which the injured party is being transported gratuitously.

POINT 5.

Statutes under police power must conform to the Constitution.

There is no exception to the generality of Constitutional limitation. Acts under the police power must accord equal protection of the laws to all.

Ritchie v. *People*, 155 Ill. 98.
Lawton v. *Steele*, 152 U. S. 133.
Freund, Police Power, 755.
Weaver v. *Palmer Bros. Co.*, 270 U. S. 402.
Louis K. Liggett Co. v. *Baldridge*, 278 U. S. 105.
Atchison T. & S. F. Ry. v. *Vosburg*, 238 U. S. 56.

POINT 6.

This statute is not a legitimate exercise of the police power because it does not tend to accomplish any of its proper objects. The regulation of a railroad and railroad traffic is a proper subject of legislative action under the police power, but in *Atchison T. & S. F. Ry.* v. *Vosburg, supra,* a statute making a classification which had no tendency to accomplish the object of such regulation was condemned.

It is not so, therefore, as the opinion of the court seems to assume, that all legislation touching a subject which may from any conceivable angle fall within police regulation, is valid. This court has said in *Lawton* v. *Steele,* 152 U. S. at 137:

> "To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference, and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals."

Tested by this standard, this statute is not a proper exercise of the police power.

POINT 7.

The analogy between a gratuitous guest and a gratuitous bailment is not sound.

The contractual relation between bailor and bailee by which one owes certain duties to the other, bears no substantial relation to the general duty which each individual owes his fellow not to negligently injure him. But if this were the basis of the statute, its invalidity needs no demonstration for its discrimination between the appellant and persons similarly circumstanced is at once apparent.

The difference between the contractual relation in reference to chattels, and the duty to use due care towards persons is clearly set forth in Hutchison on Carriers, Vol. 2, p. 1179, Sec. 1022.

> "The carrier of goods becomes the insurer of their safety only when he is paid to become so; but the carrier of passengers is bound to the utmost care and caution whether paid by the passenger or not; and this distinction is based upon wholly different reasons of public policy, being in the one case the value which it puts upon human life and personal safety, and in the other case the necessity of preventing frauds and combinations, to the 'undoing of all persons' who may have dealings of that kind with the carrier. This distinction between the gratuitous bailment of goods to the carrier and the gratuitous carriage of the passenger is, upon this ground well established, and in the latter case the carrier's liability is the same as when he is paid for the carriage."

This is approved in *Galloway* v. *Perkins,* 198 Ala. 660.

POINT 8.

This statute deprives the appellant of a Common Law right of action of a most valuable nature. Cooley says, Constitutional Limitations, 8th Ed., page 812.

> "The doubt might also arise whether the regulation made for any one class of citizens, entirely arbitrary in its character and restricting from right, privileges, or legal capacity in a manner before unknown to the law, can be sustained, notwithstanding its generality. Distinction in these respects must rest upon some reason upon which they can be defended, . . ."

It might well be contended on the authority of this eminent jurist that the act in question was beyond the pale of legitimate legislation even if it applied to all gratuitous guests.

Carozza v. *Federal Finance & C. Co.,* 149 Md. 223.

POINT 9.

The classification made deprives the appellant of the equal protection of the laws and hence invalidates the statute. The enactment itself contains an exception which shows its vice. If the appellant had been a gratuitous passenger in this same car and her husband was demonstrating it for the purpose of sale, she could recover under the exception contained in the second section. So the classification does not apply even to all gratuitous guests in automobiles but separates a part of such guests from guests in other modes of conveyance and from such guests specified in the second section. Little as may be said for the distinction between different kinds of conveyances, there is not even a mere difference between a guest in a car during a demonstration of which he may know nothing, and a guest when no such process is in progress.

A somewhat similar attempt to deprive a person of a cause of action is found in *Pearson* v. *Portland*, 69 Me. 278, where a statute denying recovery to a person injured by reason of a defective highway whose state of residence did not accor the same remedy, was held unconstitutional.

The case nearest to the present situation is *Birmingham and T. Ry. & Utilities Co.* v. *Carpenter*, 194 Ala. 141, in which a statute attempting to impute the contributory negligence of the operator of a motor vehicle to every occupant of it except passengers paying fare in a motor vehicle regularly used for public hire, was held to be discriminatory and to deny the equal protection of the laws.

There is no fair distinction between this statute and that under attack here.

For all of the foregoing reasons it is respectfully urged that Chapter 308 Public Acts of Connecticut 1927, deprives the appellant of the equal protection of the laws and should be declared invalid.

The appellant,
by THOMAS R. ROBINSON,
DAVID M. REILLY,
HERMAN LEVINE,
ARTHUR B. O'KEEFE,
Her Counsel.

FILE COPY

FILED
OCT 23 1929
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 24.

MAE SILVER

vs.

BENJAMIN SILVER, *Appellee.*

BRIEF FOR APPELLEE.

DAVID E. FITZGERALD,
WILLIAM L. HADDEN,
ELLSWORTH B. FOOTE,
BENJAMIN SLADE,
New Haven, Conn.
Attorneys for Appellee.

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TEXT BOOKS CITED.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

MAE SILVER
vs.
BENJAMIN SILVER, *Appellee.*

No. 24.

BRIEF OF APPELLEE.

Reference to Official Report of Opinion Below.

The opinions delivered in the Supreme Court of Errors for the State of Connecticut are printed in 108 Conn. 371, and also in the record (P. 25 and 31).

Statement of the Case.

The statement of facts contained in the brief of the appellant (P. 1 and 2 of appellant's brief) correctly sets forth the facts of this case except that the following should be added thereto:

At no time during the proceedings before the trial Court, including the presentation of evidence, the argument on the motion that the Court direct a verdict in favor of the defendant (P. 22 and 23), and in the motion filed by the plaintiff (appellant) to have the verdict thus rendered set aside (P. 4), did the plaintiff (appellant) raise the question that Chapter 308 of the Public Acts of Connecticut of 1927, violated the constitutional

guaranties accorded the plaintiff by the Fourteenth Amendment of the Federal Constitution.

The only specifications of appeal assigned by the appellant in her appeal to the Supreme Court of Errors of the State of Connecticut were:

That the Court erred in denying the plaintiff's motion to set aside the verdict and for a new trial;

In granting the defendant's motion that a verdict be directed in his favor;

In holding, ruling and deciding that conceding all the questions of fact in the plaintiff's favor she would not be entitled to recover as a matter of law. (P. 4 and 5.)

The question was raised for the first time by the plaintiff (appellant) in the presentation of her appeal before the Supreme Court of Errors of the State of Connecticut and it was considered by said Court.

Argument.

Summary:

It is the duty of a Court to sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

One who assails the classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

A large discretion is necessarily vested in the State Legislature to determine not only what interests of public convenience and welfare require but what measures are necessary to secure such interests.

That a State may under the police power regulate travel upon its public highways cannot be doubted, and this includes the power to regulate the use of motor vehicles.

The Legislature having the power to regulate the operation

of motor vehicles, that includes the power to enact legislation affecting the reciprocal rights and duties of all who use them, whether he be owner, operator or occupant, when those rights and duties arise out of such operation.

Even the case most strongly relied upon by the appellant recognizes that the fixing of liability upon the occupants of a motor vehicle is cognate and germane to the general subject of regulating motor vehicles upon the highways of a State.

Since motor vehicles have come into general use they have been classified separately from other methods of transportation and the power of the Legislature to impose upon their owners and operators duties different from those imposed upon operators of other vehicles has been generally upheld.

The fact that a statute applies only to motor vehicles does not create an unreasonable classification of vehicles using the road and is not a discrimination against a particular class, and does not deny the equal protection of the law.

The fact that a statute operates against only passengers in a motor vehicle and not one being transported in any other method of transportation is not an unlawful discrimination against a particular class, and does not deny them the equal protection of the law.

The fact that the statute distinguishes between one who is a gratuitous passenger in a motor vehicle and one paying for transportation, does not render it violative of the Federal Constitution.

The analogy between the gratuitous passenger in an automobile and a gratuitous bailment is sound.

The driver of an automobile is exercising a privilege granted by the Legislature, and not a right; a guest in an automobile is in the same status. It is competent for the Legislature to prescribe the conditions upon which said privilege shall be exercised.

The Legislature may prohibit the operation of motor vehicles upon the highways of a State, and it can therefore regulate the reciprocal rights and duties of parties riding in the same where such operation is permitted.

The fact that a statute may take away a common law right does not render it unconstitutional as the Legislature may suspend the operation of a general law.

Technical inequalities in a legislative enactment do not offend against the equal protection clause of the Fourteenth Amendment.

The lessening of the legal obligation of the operator of a motor vehicle towards his guest does not tend to increase the likelihood of negligent operation on his part.

The Statute being general in its application embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power, does not deny to appellant the equal protection of the law, nor violate any other provision of the Constitution of the United States.

Whatever may have moved the Legislature to pass said Statute it was within the Police Power of the State and should be upheld.

Argument Proper.

POINT 1.

Duty of Court in Passing upon Constitutionality of Legislative Enactment.

It is the duty of a Court to sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

Beach vs. Bradstreet, 85 Conn. 344,
Cooper vs. Telfax, 4 U. S. (4 dau.) 14, 19,
Cooley's "Constitutional Limitations," 8th Ed. pp. 334, 371,
Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, 78.

POINT 2.

Appellant Has the Burden in Assailing Constitutionality of Legislative Enactment.

One who assails the classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78,

Louisville & Nashville R. R. vs. Melton, 218 U. S. 36.

POINT 3.

Legislative Discretion.

In passing upon the constitutionality of Chap. 308 of the Public Acts of Connecticut for 1927 it must be borne in mind that a large discretion is necessarily vested in the State Legislature to determine not only what the interests of public convenience and welfare require but what measures are necessary to secure such interests.

Cotter vs. Stoeckel, 97 Conn. 239,

Cooley's "Constitutional Limitations," 8th Ed. Page 334,

Louisville & Nashville R. R. vs. Melton, 218 U. S. 52, 53,

Magoun vs. Ill. Tr. & Sav. Bk., 170 U. S. 294,

Orient Ins. Co. vs. Daggs, 172 U. S. 557, 562,

Royster Guano Co. vs. Virginia, 253 U. S. 412, 415.

Furthermore traffic conditions vary in different localities.

Therefore latitude must be allowed for legislative appraisement of local conditions and for legislative choice of methods for controlling the same.

Adams vs. Milwaukee, 228 U. S. 572,
Clark vs. Deckebach, 274 U. S. 392, 397.

POINT 4.

Regulation of Traffic Under Police Power.

It must be admitted that a State Legislature may under the police power regulate travel upon the highways of the State.

Jones vs. Brin, 165 U. S. 180, 182,
New Orleans Gas Co. vs. La. Light Co., 115 U. S. 650.

POINT 5.

Powers to Regulate Rights of Parties in Motor Vehicles Under Police Power.

Assuming as we must the power of the Legislature to regulate the operation of motor vehicles, that includes the power to enact legislation affecting the reciprocal rights and duties of all who use them, whether he be owner, operator or occupant, where these rights and duties arise out of such operation.

Buelke vs. Levenstadt, 214 Pac. 42,
Hartje vs. Moxley, 235 Ill. 164,
West vs. Asbury, 89 N. J. Law 402,
Opinion of General Court, 251 Mass. 569,
Packard vs. Banton, 264 U. S. 140,
Minnesota Iron Co. vs. Kline, 199 U. S. 593.

In Birmingham T. Ry. & Utilities Co. vs. Carpenter, 194

Ala. 141, apparently the case most strongly relied upon by the appellant, referred to on page 9 of her brief, the Court said at page 145:

> "We may concede that the fixing of a liability upon occupants of a motor vehicle is cognate and germane to the general subject of regulating motor vehicles upon highways of the State."

POINT 6.

Classification of Motor Vehicles for Legislative Purposes Generally Upheld.

Since motor vehicles have come into general use they have been classified separately from other methods of transportation and the power of the Legislature to impose upon their owners and operators duties different from owners and operators of other vehicles has been generally upheld.

Berry on Automobiles, Vol. 1, Sec. 30,
Garrett vs. Turner, 235 Pa. St. 383,
Westfall vs. Chicago, 280 Ill. 318,
Hendrick vs. Maryland, 235 U. S. 615.

The fact that the law applies only to motor vehicles does not create an unreasonable classification of vehicles using the road, is not an unlawful discrimination against a particular class, and does not deny the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Christy vs. Elliott, 216 Ill. 31,
Hendrick vs. Maryland, 235 U. S. 615,
State vs. Mayo, 106 Maine 62,
State vs. Swagerty, 203 Mo. 517.

Therefore the fact that the statute singles out the motor vehicle and does not include the nearly antiquated horse drawn wagon, or other methods of transportation does not make it violative of the equal protection clause of the Fourteenth Amendment.

If the Legislature may classify motor vehicles it may with like right classify an owner, occupant or driver of the same.

POINT 7.

Inherent Justice in Distinction Between Duty Owed Gratuitous Guest and One Being Transported for Pay.

There is nothing arbitrary or unreasonable in applying a different standard of duty toward a gratuitous passenger in a motor vehicle as distinguished from one being transported for compensation, hence the exception of the common carrier by the statute is valid.

There is inherent justice in the requirement that one who undertakes to perform a duty gratuitously should not be under the same obligation as one who enters upon the same undertaking for compensation. The measure of liability of one who undertakes to carry gratis is the same as that of one who undertakes to keep gratis.

Massalette vs. Fitzroy, 228 Mass. 508,
Giblin vs. McMullen, L. R. 2 P. C. 317,
Moffatt vs. Bateman, L. R. 3 P. C. 115.

The Legislature was acting well within the limits of the Police Power in making a distinction between the degrees of care to be exercised by owner or operator of motor vehicle toward a guest and that to be exercised toward one who pays for his transportation.

POINT 8.

Operation of Motor Vehicle on Highway a Privilege and Not a Right.

One owning and operating a motor vehicle upon the highways of the State of Connecticut is exercising a privilege and not a right, and it is competent for the Legislature to prescribe the conditions upon which said privilege shall be exercised.

Commonwealth vs. Kingsbury, 199 Mass. 542,
People vs. Fodera, 164 Pac. 22,
People vs. Rosenheimer, 209 N. Y. 115,
Ruggles vs. State, 120 Md. 553.

POINT 9.

Legislature May Prohibit Operation of Motor Vehicles on Highways, Hence May Regulate Rights of Parties Where Operation is Permitted.

The Legislature of the State of Connecticut may prohibit altogether the use of motor vehicles upon the highways within its borders.

Doyle vs. Continental Ins. Co., 94 U. S. 535,
State vs. Mayo, 106 Me. 62,
Stone vs. Mississippi, 101 U. S. 814,
Otis vs. Parker, 187 U. S. 606,
People vs. Rosenheimer, 209 N. Y. 115.

If the Legislature may prohibit operation of motor vehicles upon the highway altogether, then it can certainly exercise the much lesser right of regulating the reciprocal rights and duties of parties riding in the same where such operation is permitted.

POINT 10.

Legislature May Alter the Common Law.

The deprivation of a common law right does not make the Act unconstitutional for a Legislature may suspend the operation of general law.

Buelke vs. Levenstadt, 214 Pac. 42,
Carrozza vs. Federal Finance Co., 149 Md. 223.

POINT 11.

Technical Inequalities in a Statute Must Be Overlooked.

The classification made by the Statute does not deprive the appellant of the equal protection of the law and is a valid exercise of the Police Power of the State. Even assuming, as claimed by appellant in her brief, that if she had been a gratuitous passenger in the automobile of her husband and he was demonstrating it for purposes of sale, and that she could recover under the exception contained in the second section of the statute, that would not affect the validity of the Statute.

In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things. Orient Ins. Co. vs. Daggs, 172 U. S. 562.

Technical inequalities do not offend against the equal protection clause of the Fourteenth Amendment.

Louisville & Nashville R. R. vs. Melton, 218 U. S. 52.
Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78, 79.

POINT 12.

Lessening Obligation of Operator of Motor Vehicle Does Not Tend to Increase Likelihood of Negligent Operation.

The fact that the statute lessens the legal obligation of the operator or owner of a motor vehicle towards his guest, does not

tend to increase the likelihood of negligent operation on his part, any more than does the statute making it compulsory for a motor vehicle owner to carry insurance against liability for accidents, thereby relieving the owner of liability to respond in damages for injuries caused by his negligent operation of the same.

Opinion of the General Court, 251 Mass. 569.

POINT 13.

Statute Makes a Reasonable Classification and Is Not Arbitrary.

The Statute being general in its application, embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power, does not deny to the appellant the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Buelke vs. Levenstadt, 214 Pac. 42,
Cooley's "Constitutional Limitations," 8th Ed. 825,
Duncan vs. Missouri 152 U. S. 377,
Lowe vs. Kansas, 163 U. S. 81,
Louisville & Nashville R. R. vs. Melton, 218 U. S. 36,
Patsone vs. Penn., 232 U. S. 138, 144,
Royster Guano Co. vs. Virginia, 253 U. S. 412.

POINT 14.

Act Should Be Upheld.

As to what actually moved the Legislature to pass this statute we will never know.

It may have desired to put its stamp of approval upon what the Court calls an "Inherent Justice," in the requirement that one who undertakes to perform a duty gratuitously should not be

under the same measure of obligation as one who enters upon the same undertaking for pay.

It may have recognized that the enactment of legislation tending to decrease motor vehicle accidents and loss of life incident thereto was one of its greatest problems, and that to bring same about it was necessary to regulate the reciprocal rights and duties of parties riding in motor vehicles.

Suffice it to say, that the classification made by the statute in question is within the wide range of discretion which the Legislature has under the police power, since the statute has a fair and substantial relation to the object of the legislation, which is the control or regulation of motor vehicle traffic upon our public highways.

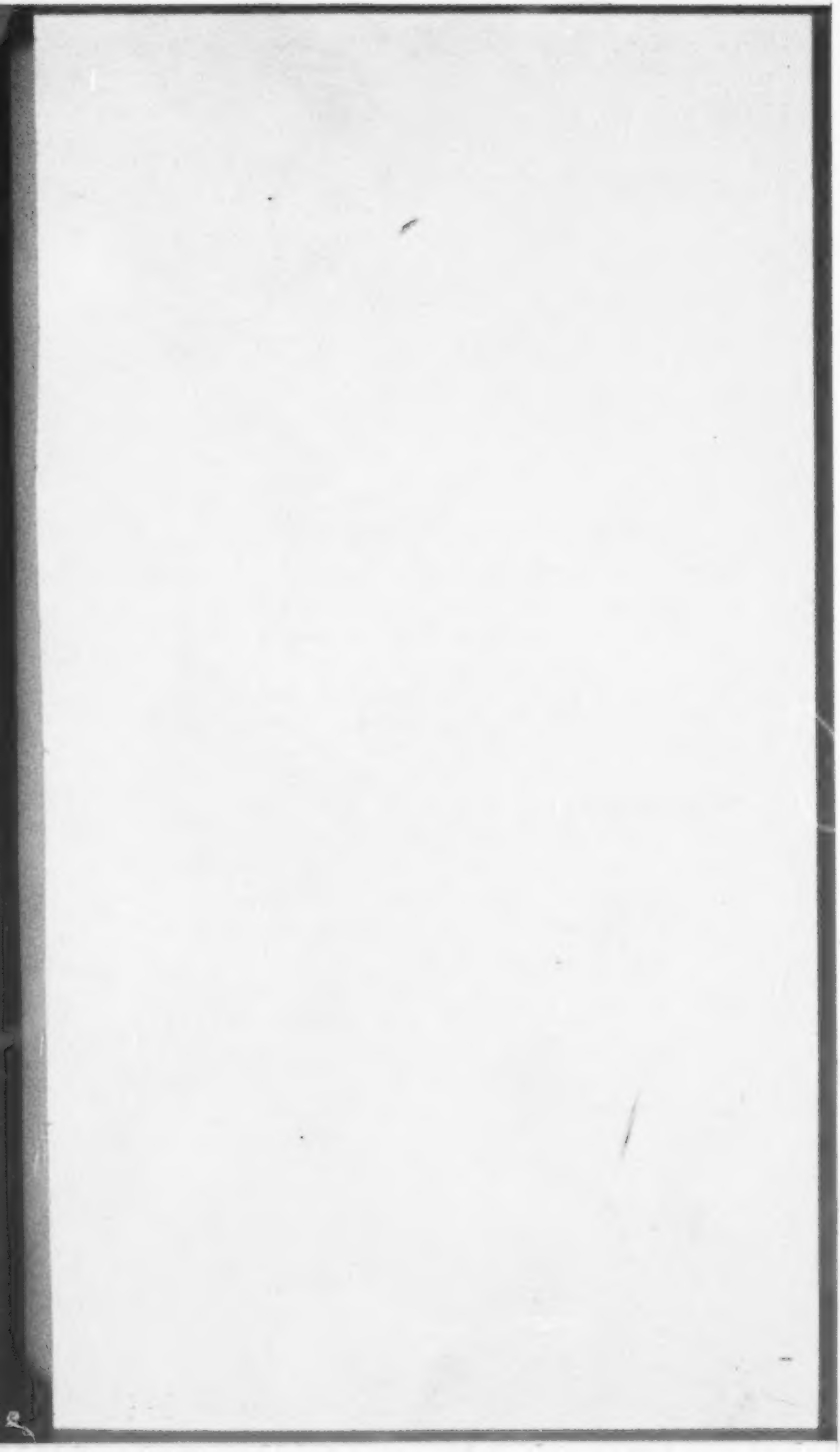
It is therefore respectfully submitted and urged that Chap. 308 of the Public Acts of Connecticut for 1927 does not deprive the appellant of the equal protection of the law under the Fourteenth Amendment, nor violate any right guaranteed to her by the Federal Constitution.

The Act should be upheld.

THE APPELLEE,

By

DAVID E. FITZGERALD,
WILLIAM L. HADDEN,
ELLSWORTH B. FOOTE,
BENJAMIN SLADE,
His Counsel.



SUPREME COURT OF THE UNITED STATES.

No. 24.—October Term, 1929.

Mae Silver, Appellant, vs. Benjamin Silver. } Appeal from the Supreme Court of the State of Connecticut.

[November 25, 1929.]

Mr. Justice Stone delivered the opinion of the Court.

This is an appeal under § 237 of the Judicial Code, as amended by Act of February 13, 1925, from a judgment of the Supreme Court of Connecticut upholding the constitutionality of a state statute. Chapter 308 of the Public Acts of Connecticut of 1927 (printed in the margin[1]) provides that no person carried gratuitously as a guest in an automobile may recover from the owner or operator for injuries caused by its negligent operation. The appellant brought suit in the Superior Court of New Haven County against appellee, her husband, for injuries so sustained. Judgment for the defendant was affirmed by the Supreme Court. Both courts ruled that the statute barred appellant, a guest carried gratuitously, from recovery for injuries caused by ordinary negligence in the operation of the car, and the Supreme Court, by

[1]Chapter 308. *An Act releasing owners of motor vehicles from responsibility for injuries to passengers therein.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

Sec. 2. This act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger being transported by such public carrier or by such owner or operator.

divided bench, held that the statute did not deny to appellant the equal protection of the laws guaranteed by the Fourteenth Amendment.

As the record does not disclose the constitutional grounds on which the appellant challenged the validity of the statute, our review will be limited to the single question arising under the Federal Constitution which was considered in the opinion of the court below. *Saltonstall* v. *Saltonstall*, 276 U. S. 260. We need not, therefore, elaborate the rule that the Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object. See *Louis Pizitz Dry Goods Co.* v. *Yeldell*, 274 U. S. 112, 116; *New York Central Railroad Co.* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Wilmington Mining Co.* v. *Fulton*, 205 U. S. 60, 74.

The use of the automobile as an instrument of transportation is peculiarly the subject of regulation. We cannot assume that there are no evils to be corrected or permissible social objects to be gained by the present statute. We are not unaware of the increasing frequency of litigation in which passengers carried gratuitously in automobiles, often casual guests or licensees, have sought the recovery of large sums for injuries alleged to have been due to negligent operation. In some jurisdictions it has been judicially determined that a lower standard of care should be exacted where the carriage in any type of vehicle is gratuitous. See *Massaletti* v. *Fitzroy*, 228 Mass. 487; *Marcienowski* v. *Sanders*, 252 Mass. 65; *Epps* v. *Parrish*, 26 Ga. App. 399. Whether there has been a serious increase in the evils of vexatious litigation in this class of cases, where the carriage is by automobile, is for legislative determination and, if found, may well be the basis of legislative action further restricting the liability. Its wisdom is not the concern of courts.

It is said that the vice in the statute is not that it distinguishes between passengers who pay and those who do not, but between gratuitous passengers in automobiles and those in other classes of vehicles. But it is not so evident that no grounds exist for the distinction that we can say *a priori* that the classification is one forbidden as without basis, and arbitrary. See *Clarke* v. *Deckebach*, 274 U. S. 392, 397.

Granted that the liability to be imposed upon those who operate any kind of vehicle for the benefit of a mere guest or licensee is an appropriate subject of legislative restriction, there is no constitutional requirement that a regulation, in other respects permissible, must reach every class to which it might be applied—that the legislature must be held rigidly to the choice of regulating all or none. *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144; *Miller* v. *Wilson*, 236 U. S. 373, 382, 384; *International Harvester Co.* v. *Missouri*, 234 U. S. 200, 215; *Barrett* v. *Indiana*, 229 U. S. 26, 29 (1913). In this day of almost universal highway transportation by motor car, we cannot say that abuses originating in the multiplicity of suits growing out of the gratuitous carriage of passengers in automobiles do not present so conspicuous an example of what the legislature may regard as an evil, as to justify legislation aimed at it, even though some abuses may not be hit. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Bryant* v. *Zimmerman*, 278 U. S. 63, 73. It is enough that the present statute strikes at the evil where it is felt and reaches the class of cases where it most frequently occurs.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.